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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/862,871

05/22/2001

Yves Patrick Lajouanic

59828264-5

1076

26453 7590 03/07/2007
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EXAMINER

STERRETT, JONATHAN G

ART UNIT

PAPER NUMBER

3623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/862,871

Applicant(s)

LAJOUANIE, YVES PATRICK

Examiner

Jonathan G. Sterrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Summary

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 11, 2006 has been entered.

2. This **Non-Final Office Action** is responsive to applicant's amendment filed September 11, 2006. Currently **Claims 1-29** are pending.

Response to Arguments

3. The applicant's arguments have been fully considered, but they are not persuasive.

4. The applicant argues with respect to Claims 1, 10, 16, 17, 20 and 22 on pages 14 and 15 that Bonabeau does not teach analyzing a business activity.

The examiner respectfully disagrees.

First, the examiner notes that the claims are extremely broad. The claims do not specify the context of the business activity, they only state "analyzing the business activity". The term "business activity" is so broad as to include the teachings of Bonabeau, which develop business models for analyzing a business

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activity in the context of a simulation. Even so, the simulations taught by Bonabeau are not in a vacuum, that is, they are not simulations for their own sake, but to analyze overall the business activity of a real life system (e.g. see para 8, where the activity relates to a business producing and selling goods to customers).

5. The applicant argues with respect to claim 14 on page 15 that Bonabeau does not teach analyzing at least one performance criteria of a business activity.

The examiner respectfully disagrees.

Bonabeau teaches in para 103 that performance criteria are used to evaluate models which are then selected based on the analysis of their performance criteria. In other words, an analysis of how the models performed in certain respects (where those respects are determined by looking at the performance criteria of how the models performed – see also para 102, the performance model includes financial information, profits, revenues and so forth – these are all performance criteria). The goal of Bonabeau's invention is to use business models to predict what would happen in reality, and use these predictions (based on the performance criteria, i.e. how the models perform) as a basis for making a decision. Thus a variety of models are simulated and the ones with the best performance (i.e. again based on their performance criteria). This selection requires an analysis – a comparison of the models provided by way of a ranking. This ranking is an analysis based on the performance criteria of how the models performed.

6. The applicant argues that Bonabeau does not teach predefined performance models on page 16.

The examiner respectfully disagrees.

"predefined" is a broad term. Insofar as Bonabeau's models are assembled from predefined elements and used in advance of the selection for further evolution (see para 104), Bonabeau's models are "predefined".

7. The applicant argues with respect to Claim 26 on page 16 that Bonabeau does not teach analyzing an existing business activity.

The examiner respectfully disagrees.

The simulations and modeling that Bonabeau is using his models for are an existing business activity in that they exist on the context of a simulation. The examiner notes that the term "existing" is an extremely broad term.

8. The applicant notes that there is no motivation to combine the cited references on page 19.

The examiner respectfully disagrees.

Para 95 notes that Bonabeau's invention can be used in the context of petri nets. The Van der Aalst reference addresses the use of petri nets to model business processes, specifically that subprocesses defined by petri nets allow for a resolution in modelling processes so that the complexity of the real world is reflected in the model. One of ordinary skill in the art would find motivation to

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use Van der Aalst's teachings regarding using subprocesses in modelling real business processes with a reasonable expectation of success that such an approach would provide the resolution, complexity and detail such that real world processes would be effectively and accurately reflected in the use of subprocesses utilized in the context of Bonabeau's teachings regarding model simulation.

9. the examiner notes that there are eight independent claims cited in the invention and that while the claims are currently so broad as to not require undue search to identify art to apply to all eight claims, further amendments to the claims may result in a restriction requirement being imposed on the claims.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. **Claim 1-19 and 22-29** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Under the statutory requirement of 35 U.S.C. § 101, a claimed invention must produce a useful, concrete, and tangible result. For a claim to be useful, it must yield a result that is specific, substantial, and credible (MPEP § 2107). A

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concrete result is one that is substantially repeatable, i.e., it produces substantially the same result over and over again (*In re Swartz*, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000)). In order to be tangible, a claimed invention must set forth a practical application that generates a real-world result, i.e., the claim must be more than a mere abstraction (*Benson*, 409 U.S. at 71-72, 175 USPQ at 676-77). Additionally, a claim may not preempt abstract ideas, laws of nature or natural phenomena nor may a claim preempt every "substantial practical application" of an abstract idea, law of nature or natural phenomena because it would in practical effect be a patent on the judicial exceptions themselves (*Gottschalk v. Benson*, 409 U.S. 63, 71-72 (1972)). (Please refer to the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" for further explanation of the statutory requirement of 35 U.S.C. § 101.)

Regarding independent **Claims 1, 10, 14, 16, 17, 22 and 26**, the claims cite steps for monitoring business performance. The claims provide for a concrete result and a result that has utility, however the steps do not provide for a tangible result.

The result of the claims do not provide a tangible output to the method that is claim, therefore the claim does not provide a **tangible** result. (examiner note: in the case of method claims, a tangible rejection can be overcome by making the output of the claims tangible, e.g. being displayed, stored or printed).

Claims 2-9, 11-13, 15, 18-19, 23-25 and 27-29 depend on **Claims 1, 10, 14, 16, 17, 22 and 26**, and therefore are indefinite at least for the reasons cited above.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. **Claims 1-5, 10-12, 14, 16, 20 and 22-29** are rejected under 35 U.S.C. 102(e) as being anticipated by **Bonabeau US2001/0053991**.

Regarding **Claim 1**, Bonabeau discloses:

analyzing the business activity; and

Page 2 paragraph 19 line 1-4, analysis component provides information on why business is successful.

selecting at least one predefined business performance model from a plurality of predefined business performance models for monitoring the performance of the business activity.

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Page 8 paragraph 86 line 1-3, business performance models are illustrated as models 11 and 13.

Page 9 paragraph 97 line 1-7, business models are ranked in a business ecosystem based on the performance of their associated performance models. For this ranking to occur, predefined business performance models are selected to monitor the performance of a business model in the ecosystem – see figure 6 #3 performance models are selected – in this case four potential models are selected.

Regarding **Claim 2**, Bonabeau discloses:

Wherein the plurality of predefined business performance models is a first business performance model, a second business performance model and a third business performance model.

Page 2 paragraph 23 line 4-7, Value proposition (VP)'s describe output values provided by businesses.

Page 11 paragraph 110 line 1-3, Value propositions (VP)s are composed of building blocks that are assembled to create an overall business performance model for a particular business, including but not limited to a first, second and third, business performance model.

Figure 6 #3 shows a first, second, and third business performance model labeled M1, M2 and M3 respectively.

Regarding **Claim 3**, Bonabeau discloses:

Wherein the first business performance model are used to monitor the performance of at least one business activity involving at least one user accessing a service in order to perform at least one transaction requiring an immediate response.

Page 11 paragraph 111, Business model uses a value proposition, VP, of connection speeds to the internet.

Page 11 paragraph 119, Business model uses a value proposition, VP, of user downloads, that is, a user downloading something from the internet. This is a transaction requiring an immediate response, because the user selects an item to be downloaded, a webpage or data, and that selection requires an immediate response.

Page 11 paragraph 144, the customer model that determines the success of the business model is 'sensitivity to quality of service' for example, response time to internet interaction. The business performance model is used to monitor the performance of at least one business activity, in this case 'response time' to internet activity, which is at least one activity involving at least one user accessing a service to perform at least one transaction requiring an immediate response.

Regarding **Claim 4**, Bonabeau discloses:

Wherein the second business performance model are used to

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monitor the performance of at least one business activity involving a flow of data having to be processed through at least one application and then distributed.

Figure 6 shows four business models for monitoring performance which according to page 11 paragraph 110, can be composed of a number of value propositions, including, mailbox usage.

Page 11 paragraph 116, mailbox usage value proposition is a building block to a performance model that is a business activity involving a flow of data having to be processed through at least one application and then distributed.

Regarding **Claim 5**, Bonabeau discloses:

Wherein the third business performance model are used to monitor the performance of at least one business activity involving at least one operation that needs to be completed before a predetermined time.

Figure 6 shows four business models for monitoring performance which according to page 11 paragraph 110, can be composed of a number of value propositions, including, limited connection time to the internet.

Page 11 paragraph 113, limited connection time. The user has a limited time to at least log on to the ISP and be connected. The logging on and any ISP activity would have be completed prior to a predetermine time specified by the amount of their limited connection time.

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Regarding **Claim 10**, Bonabeau discloses all of the limitations above in Claim 1, except for:

Selecting a predefined category of users from a plurality of predefined category of users.

Page 11 paragraph 139 line 1-5, the customer model is used to determine predefined categories of users. These users are segmented by their customer model parameters – see page 11 paragraph 140.

Page 11 paragraph 140 –paragraph 149, these are parameters used to define predefined categories of users in a similar way to how VP's (page 11 paragraph 110) determine the building blocks of business models.

Regarding **Claim 11**, Bonabeau discloses:

Generating an interface based on a least the selected at least one predefined business performance model and the selected predefined category of users for illustrating the performance of the business activity.

Figure 12A and Figure 12B are interfaces based on predefined business performance models and for the selected predefined category of users (i.e. ISP customers) for illustrating the performance of the business activity. In this case the business activity being illustrated is average monthly ISP billing. Figure 12B illustrates a variety of business performance metrics.

Regarding **Claim 12**, Bonabeau discloses:

the interface is selected from a plurality of predefined interfaces.

Page 14 paragraph 191, Figure 12B illustrates interfaces which are selected from a plurality of predefined interfaces. These predefined interfaces illustrate the performance of the business activity. These show how the various businesses perform in the economic ecosystem.

Claims 14 and 22-25 recites limitations handled by the rejections of **Claims 1-5 and 10-12** above, and are therefore rejected under the same rationale.

Regarding **Claim 20**, Bonabeau discloses the same functionalities recited as discussed in **Claim 1**. Furthermore, Bonabeau teach the elements of the claim, i.e. a processor for analyzing and selecting the business performance model (para 30, 107) and a user interface for viewing the performance data (para 107, the MATLAB package used for processing code to simulate models has an interface for viewing the results of the simulation, i.e. the performance data).

Regarding **Claims 16 and 20**, the limitations are disclosed above by Bonabeau except for:

selecting at least one business performance model from the plurality of business performance models for monitoring a performance of the business activity;

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Para 20, a plurality of different kind of business performance models are defined and at least one is selecting for determining how that model will perform. These business performance models are chosen in conjunction with appropriate customer performance models (para 21).

each business performance model associated with at least one performance criteria.

Para 11 metrics for evaluating performance (i.e. performance criteria) include profit, revenue and market share.

Claims 26-29 recite similar limitations to those addressed by the rejection of **Claims 1-5, 10, 12, 16 and 20** above, and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claims 6-9, 13, 15, 17, 18, 19 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonabeau in view of Van der Aalst.

Van der Aalst, W.M.P., "The Application of Petri Nets to Workflow Management",

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The Journal of Circuits, Systems, and Computers, pp.1-53.

Regarding **Claim 6**, Bonabeau teaches:

A first, second and third business performance model, as discussed above. Each business performance model is based upon a building block of a value proposition.

Bonabeau does not teach:

The first, second, and the third business performance model each include a plurality of predefined sub-processes.

Van der Aalst teaches processes having sub-processes (Page 14 paragraph 3 line 1-5) and that high level processes can be modeled to include more detailed sub-processes. Van der Aalst teaches that using hierarchy in modeling processes and subprocesses allows subprocesses to provide the necessary complexity and detail reflected by real world processes (Page 13 paragraph 3.2 line 1-3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include models having a plurality of predefined sub-processes, as taught by Van der Aalst, because it would provide the ability to better model business performance using subprocesses that provide necessary complexity reflected in real world processes.

Regarding **Claim 7**, Bonabeau teaches:

A first, second and third business performance model, as discussed above. Each business performance model is based upon a building block of a value proposition.

Bonabeau does not teach:

Wherein the plurality of predefined sub-processes for the first business performance model, for the second business performance model and for the third business performance model include a first sub-process, a second sub-process and a third sub-process.

Van der Aalst teaches:

Wherein the plurality of predefined sub-processes for the first business performance model, for the second business performance model and for the third business performance model include a first sub-process, a second sub-process and a third sub-process.

Page 14 paragraph 3 line 4-6, subnets or subprocesses contain subsystems. The hierarchy here taught by Van der Aalst allows for complex models of processes to be built in layers, allowing for a high level of complexity without having one layer that is too complex to understand. This would include any number of subprocesses including a first, second, and third subprocess. The hierarchy of Petri nets as applied to modeling business processes allows for an unlimited number of hierarchies and an unlimited number of subprocesses including a first, second and third subprocess.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include models having a plurality of predefined sub-processes, including a first, second and third subprocess, as taught by Van der Aalst, because it would provide the ability to model business performance using subprocesses that provide necessary complexity

Regarding **Claim 8**, Bonabeau teaches:

A first, second and third business performance model, as discussed above. Each business performance model is based upon a building block of a value proposition.

Bonabeau does not teach:

Wherein the plurality of predefined sub-processes of the first business performance model, the second business performance model and the third business performance model each include one or more predefined metrics.

Van der Aalst teaches:

Wherein the plurality of predefined sub-processes of the first business performance model, the second business performance model and the third business performance model each include one or more predefined metrics.

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As discussed above, Van der Aalst teaches the use of subprocesses and hierarchies modeled using Petri nets to model workflow processes.

Page 32 paragraph 3 line 5-7, Van der Aalst teaches using a variety of key performance metrics, e.g. average throughput and average waiting time. These apply to any and all subprocesses within a workflow management process including various hierarchies of a process.

Van der Aalst teaches that performance analysis enables an organization to meet requirements with respect to throughput, service levels and resource utilization. (page 32 paragraph 1 line 6-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include using performance metrics for each of the subprocesses, as taught by Van der Aalst, because it would enable an organization to meet requirements with respect to throughput service levels and resource utilization.

Regarding **Claim 9**, Bonabeau teaches:

Modeling business performance using models based on modules, as discussed above. Bonabeau also teaches using Petri nets, which are models of processes, to model customer behavior (page 9 paragraph 95 line 1-2).

Bonabeau does not teach:

Wherein the business activity is a business process.

Van der Aalst teaches:

Wherein the business activity is a business process.

Page 1 paragraph 1 line 1-2. workflow management is a way to control business processes.

Page 1 paragraph 2 line 1-3, IS systems need to support the business processes and not just the tasks. Van der Aalst teaches that the business processes and tasks are activities in the business.

Page 22 paragraph 4.3 line 6-7, tasks are activities that make up steps in a workflow process – in this example an employee is executing a task.

Van der Aalst teaches that because of the complex nature of businesses, there is a need to apply workflow management tools to model the business activity as a process and use WFMS tools to manage the process.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include wherein the business activity is a business process, as taught by Van der Aalst, because it would enable an organization to effectively manage business activities that are complex in nature by modeling them.

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Regarding **Claim 17**, Bonabeau teaches the same functionalities recited as discussed in **Claim 1**. Furthermore, Bonabeau discloses the elements of the claim, i.e. a user interface for viewing performance data. (para 107, the MATLAB package used for processing code to simulate models has an interface for viewing the results of the simulation, i.e. the performance data).

Bonabeau teaches:

The computer storing at least one predefined business performance model and to generate performance data using the predefined business performance model,

Para 108, the instructions are loaded into memory,

Para 103, the outputs of the simulation generate performance data (i.e. some models generate profit, others lose market share). – these outputs are generated from models defined before the simulation started, i.e. predefined models.

the computer analyzing the business activity

Para 103, rankings of the models are computer analyses of the business activity because they require a determination of how the models are listed in order. See also para 105, a portrayal of the financial performance is an analysis.

selecting at least one business performance model from the plurality of business performance models for monitoring a performance of the business activity;

Para 20, a plurality of different kind of business performance models are defined and at least one is selecting for determining how that model will perform.

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These business performance models are chosen in conjunction with appropriate customer performance models (para 21).

each business performance model associated with at least one performance criteria.

Para 11 metrics for evaluating performance (i.e. performance criteria) include profit, revenue and market share.

Bonabeau teaches a computer for performing modeling of a simulation (para 108). Bonabeau notes that a "powerful" computer, e.g. a workstation, may be used for performing the simulation.

Bonabeau teaches uploading models over a network to a computer (para 107).

Bonabeau does not teach a explicitly teach a server to perform the model simulation.

However, Official Notice is taken that it is old and well known in the art to upload information to a server for the server to process. This approach, i.e. distributed computing using a server, is known to provide flexibility to the user, since the user can be remotely located and access the server over a network (e.g. the internet).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau, regarding uploading information to a computer, to include the step of uploading the information to a

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server over network, because it would providing flexibility to the user in performing modeling simulations.

Claims 13, 15, 18, 19 and 21 recite limitations handled by the rejections of **Claims 6-9** above, therefore the same rejection applies.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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server over network, because it would providing flexibility to the user in performing modeling simulations.

Claims 13, 15, 18, 19 and 21 recite limitations handled by the rejections of **Claims 6-9** above, therefore the same rejection applies.


Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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JGS 2-22-2007


JONATHAN G. STERRETT
EXAMINER
AU 3623